

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

DANIEL AUSTIN

PLAINTIFF

V.

NO. 2:98CV089-B-B

ROBINSON PROPERTY GROUP,
LIMITED PARTNERSHIP d/b/a
HORSESHOE CASINO AND HOTEL

DEFENDANT

Memorandum Opinion

This cause comes before the court on the plaintiff's motion to remand. The court has duly considered the parties' memoranda and the defendant's exhibit and is ready to rule.

The complaint alleges tortious conduct on the part of the defendant during the plaintiff's visit as a customer at the Horseshoe Casino and Hotel located in Tunica County, Mississippi and seeks unspecified compensatory and punitive damages. The defendant removed this cause on the ground of diversity jurisdiction. The plaintiff concedes that his damages claims exceed the jurisdictional minimum of \$75,000 but objects to the removal pursuant to 28 U.S.C. § 1441(b).¹ See Marathon Oil Co. v. Ruhrgas, 145 F.3d 211, 221 (5th Cir. 1998) ("28 U.S.C. § 1441(b) prohibits removal by an in-state defendant in diversity cases.") (footnote omitted). The plaintiff is a Tennessee citizen. The defendant's citizenship for jurisdictional purposes is in issue.

The affidavit of Bob McQueen, the general manager of Horseshoe Casino and Hotel, states that "Robinson Property Group is a limited partnership organized under the laws of the State of Mississippi." The affidavit further states:

The general partner for Robinson Property Group is Horseshoe GP, Inc., a corporation organized under the laws of the State of Nevada with its principal

¹28 U.S.C. § 1441(b) reads in pertinent part:

...Any [diversity] action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

place of business in Nevada. Robinson Property Group's limited partner is Horseshoe Gaming, L.L.C., a limited liability company organized under the laws of the State of Delaware with its principal place of business in Nevada.²

The complaint designates the defendant as a limited partnership but the plaintiff relies on corporate citizenship as defined in 28 U.S.C. § 1332(c)(1) (the state of incorporation and the principal place of business). The plaintiff makes a conclusory assertion that the defendant is a citizen of Mississippi on the ground that it is doing business at Horseshoe Casino and Hotel and, thus, has a principal place of business in Mississippi. It is undisputed that the defendant operates the Horseshoe Casino and Hotel in Tunica County, Mississippi. However, "[t]he mere fact that a corporation is doing business or is licensed to do business in a state does not make it a citizen of that state for purposes of diversity jurisdiction." Sanders Co. Plumbing and Heating, Inc. v. B.B. Andersen Constr. Co., 660 F. Supp. 752, 757 (D. Kan. 1987) (citation omitted).³ In any event, the defendant is not a corporation; Bob McQueen's uncontroverted affidavit establishes that the defendant is a limited partnership.

The Supreme Court has rejected the argument that "partnerships should be treated as corporations for citizenship purposes." Magnolia Management Corp. v. Quest Rescue Partners-8, L.P., 792 F. Supp. 45, 48 (S.D. Miss. 1992) (citing Carden v. Arkoma Associates, 494 U.S. 185, 189, 108 L. Ed. 2d 157, 164 (1990)). Accordingly, "[t]he state under the laws of which a limited partnership is organized is irrelevant for diversity jurisdiction purposes." Magnolia Management Corp., 792 F. Supp. at 48. "[F]or diversity purposes, a limited partnership is a citizen of each state of which its general and limited partners are citizens." Id. The plaintiff does not challenge the citizenship of the defendant's partners, as set forth in Bob McQueen's

²The dual citizenship of the defendant's partners is also alleged in the notice of removal.

³See Village Fair Shopping Center Co. v. Sam Broadhead Trust, 588 F.2d 431, 434 (5th Cir. 1979) ("total corporate activity" test determines principal place of business); Citicorp Indus. Credit, Inc. v. Drake Towing Co., 626 F. Supp. 990 (S.D. Miss. 1986) ("Qualification to do business is not the equivalent of incorporation."). The court in Citicorp Indus. Credit, Inc. found that since the plaintiff was neither incorporated in Mississippi nor had its principal place of business in Mississippi, "there is no basis whatsoever for finding that it is a citizen of the State of Mississippi." Id. at 990.

affidavit, and therefore, has made no showing that the defendant is a Mississippi citizen.

Accordingly, the removal of this cause is not precluded by section 1441(b).

For the foregoing reasons, the court finds that the plaintiff's motion to remand should be denied.⁴ An order will issue accordingly.

THIS, the ____ day of November, 1998.

NEAL B. BIGGERS, JR.
CHIEF JUDGE

⁴The defendant requests an award of reasonable attorneys' fees, costs and expenses incurred in contesting the instant motion. 28 U.S.C. § 1447 (c) provides that "[a]n order remanding the case may require payment of just costs and any actual expenses, including attorney fees, **incurred as a result of the removal.**" (Emphasis added). The removal statutes do not authorize an award to a removing defendant and the defendant neither cited Rule 11 of the Federal Rules of Civil Procedure nor complied with the procedure prescribed by Rule 11(c) (1)(A).